

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

MURRAY BROTHERS, INC. *et al*,

Plaintiffs,

v.

TRUSOUTH OIL, LLC,

Defendant.

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CIVIL ACTION NO. 9:11CV-175

JUDGE RON CLARK

**ORDER ADOPTING REPORT AND RECOMMENDATIONS OF UNITED STATES
MAGISTRATE JUDGE**

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of Defendant Trusouth Oil, LLC's Rule 12(b)(1) Motion has been presented for consideration. The Report and Recommendations recommends that Defendant's Rule 12(b)(1) motion [Doc. # 11] be denied. Defendant filed written objections to the Report and Recommendation on May 15, 2012. Doc. # 23.

Having made a *de novo* review of the written objections filed by Defendant, the court finds that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit. Defendant's position that dismissal is appropriate in light of its addition of a necessary and non-diverse third party defendant has been rejected by the Fifth Circuit. *State Nat'l Ins. Co., Inc. v. Yates*, 391 F.3d 577, 579-81 (5th Cir. 2004); *see also Fireworks Distrib. Ctr., LLC v. Winco Fireworks, Inc.*, 2010 WL 1050326 at *2-3 (S.D. Tex. Mar. 17, 2010). The court therefore adopts the findings and conclusions of the Magistrate Judge as those of the court.

In light of the foregoing, it is ORDERED that Defendant Trusouth Oil, LLC's Rule 12(b)(1) Motion [Doc. # 11] is DENIED.

So **ORDERED** and **SIGNED** this **6** day of **June, 2012**.

A handwritten signature in black ink, appearing to read "Ron Clark", written in a cursive style.

Ron Clark, United States District Judge